**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA**

**BAIYWO ROP,**

**Plaintiff**

**CIVIL NO.:**
**COMPLAINT AND DEMAND FOR JURY TRIAL, EXHIBITS __; SUMMONS IN A CIVIL CASE**

**vs.**

**ADVENTIST HEALTH SYSTEM d/b/a FLORIDA HOSPITAL**

**Defendant. /**

## COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DR. BAIYWO ROP, by and through his undersigned counsel, hereby complains against ADVENTIST HEALTH SYSTEM d/b/a FLORIDA HOSPITAL [hereinafter Florida Hospital].

## STATEMENT OF THE CLAIM

**1.** This is an action seeking damages in excess of $15,000 and to vindicate violations of the Plaintiff's rights and redress the unlawful conduct of the Defendant. This action arises out of the illegal treatment that the Defendant subjected the Plaintiff to. Dr. Rop alleges *inter alia*, that he has been subjected to disparate treatment because of his race, national origin, and disability, and that he was unlawfully retaliated against when he complained. These acts were done in violation of Chapter 760 of the Florida Statutes.

## PARTIES

2. Plaintiff, Dr. Baiywo Rop, at all material times, resided in the United States, the State of Florida, and Orange County, Florida.

3. Defendant, Florida Hospital is an entity that regularly conducts business in Orange County, Florida.

## JURISDICTION AND VENUE

4. This is an action for money damages in excess of Fifteen Thousand Dollars ($15,000.00), exclusive of costs, interests and attorneys' fees, brought pursuant to Chapter 760 of the Florida Statutes.
5. This action is authorized and instituted pursuant to Chapter 760 of the Florida Statutes. The Jurisdiction of the court is predicated upon Article V of the Florida Constitution.
6. Venue is proper in Orange County, Florida pursuant to Chapter 47.011 of the Florida Statutes. Defendant Orange County conducts its business in Orange County, Florida. Also, the causes of action arose in Orange County, Florida.
7. All conditions precedent to the bringing of this action have occurred or have been performed. The Plaintiff timely dual-filed a complaint with the EEOC and FCHR. The EEOC did not complete its investigation within the required 180 days. The FCHR also failed to render a decision within the required 180 days. Accordingly, Plaintiff proceeds under F.S.A. §760.11(4).

## FACTUAL ALLEGATIONS

8. Dr. Baiywo Rop is a black doctor whose national origin is Kenyan. He also suffers from a medical condition that causes him to be disabled, or perceived as disabled.
9. Dr. Rop graduated from medical school in 2012, and interned at a hospital in Columbia Missouri. Subsequent to his internship he was accepted into Florida Hospital's Radiology Residency in Orlando, Florida in 2013.

10. While a resident at Florida Hospital, the Program Director was Dr. Laura Bancroft. Dr. Kurt Schere was the Deputy Program Director and Dr. Portoghese was the Designated Institute Official (DIO).
11. Dr. Rop began his Radiology Residency in July 2013. Prior to his acceptance, Dr. Rop began to experience physical symptoms that impacted his health. These symptoms first materialized in his third year of medical school. Although he consulted different doctors, he was not properly diagnosed until the fall of 2015.
12. Ultimately, Dr. Rop was diagnosed with Severe Pernicious Anemia, an autoimmune disease. Symptoms to this disease include weakness, headaches, chest pains and weight loss. In severe cases such as Dr. Rop, symptoms can also include memory loss, numbness in the arms and legs, oral lesions, depression and confusion.
13. Upon beginning his residency, Dr. Rop's symptoms began to worsen. He experienced frequent headaches, fatigue, weakness depressive symptoms, memory loss, severe anxiety, abdominal pain and shaking. As a result of his depressive symptoms he sought assistance from Dr. Bancroft in September 2013.
14. During his meeting with Dr. Bancroft he informed her of his ongoing medical issues and inquired about possible treating physicians. She made recommendations, and he began to see doctors for his mental health and physical symptoms based on her recommendations. She also took him to Dr. Burt Bertram's office at the Physicians Assistance Office.
15. In 2014 Dr. Rop met with Dr. Bancroft to request assistance with physics. His medical conditions were adversely impacting his academic abilities, and he sought

assistance. He asked for tutoring with Dr. William Sensakovic. Dr. Rop had multiple conversations about his academic issues with Dr. Bancroft.

16. After about a year in the program Dr. Rop's symptoms did not improve, and he continued to suffer from the worsening condition. As a result, he requested two weeks off in June 2014 in order to take time to address his medical conditions. Dr. Bancroft approved his request.
17. Upon his return to work, Dr. Rop requested three months of medical leave to further assess his medical condition and travel back to African to visit his aging parents, particularly his mother who was sick. Dr. Bancroft informed him that he could not take three months of medical leave because he would delay his residency graduation.
18. Dr. Rop modified his three-month medical leave request to one month of medical leave and offered to do a rotation in Kenya for the month he was absent. While Dr. Bancroft stated that she would approve his one month medical leave request, she suggested to Dr. Rop that he should go back to Kenya and finish his residency there and then come back to America to work. Dr. Bancroft made this suggestion to Dr. Rop on more than one occasion. Finally, when Dr. Rop asked her if she would hire a doctor that completed his residency in Kenya, she did did not respond or make the suggestion again.
19. In August 2014, Dr. Rop's condition became increasingly severe. He had distal colonic fissures that required a procedure to correct. He also had a colonoscopy. After his colonoscopy, he experienced seizures that grew worse and impacted his sleep.

20. When Dr. Rop returned after his procedure, he had another meeting with Dr. Bancroft. She stated to him that he needed to improve his medical problems in two weeks and show significant improvement in his academic performance or they were going to discontinue him from the program. Dr. Rop again reiterated the severity of his medical issues. He believed he was suffering from a terminal condition.
21. During this period, Dr. Rop also overheard other faculty members commenting that he was just lazy and needs to stop smoking too much weed. Dr. Rop has never consumed marijuana. The faculty members were responding to his often constant bloodshot red eyes that are a result of his vision being compromised because of his illness.
22. Due to the stress that this was having on his family as well as himself, Dr. Rop requested that he take medical leave for the remainder of the academic year (until July 2015). He wanted to use that time to focus on his health. Both Dr. Bancroft and Dr. Portoghese agreed. He went on medical leave from November 4, 2014 until July 2015.
23. While on medical leave, Dr. Rop received a phone call from Ava Fulbright, the assistant to Dr. Portoghese, asking if he received his letter from Dr. Bancroft explaining his medical leave. He had not received the letter. When he received a copy of the letter he discovered, for the first time, that he had been placed on academic remediation twice.
24. Remediation is a status that addresses one's academic performance. The program's policy requires that if one is placed on remediation that certain procedures are followed. For instance, the resident needs to be informed and told what is expected in

order to be successful. None of this was done in Dr. Rop's case. His academic advisor, Dr. Hernandez was also unaware of his remediations. He found out about the two remediations when he read his medical leave letter.

25. Dr. Rop called Dr. Bancroft inquiring about the remediations mentioned in his letter. She stated that is what the lawyers came up with. He requested a meeting and had one with Dr. Portoghese, Dr. Hernandez and Dr. Bancroft. Ava Fulbright, Patti Horvath, a coordinator, and an HR representative were also present. They assured him that the remediation was an internal matter and would not be reported. However, they could not explain why it was in his medical leave letter, a document he would have to show to future employers to explain his absence from his residency.
26. When Dr. Rop returned, he was able to function normally for a short period of time before his symptoms began to reemerge in their severe form. He also began to experience further stereotypical dismissive treatment from the faculty and staff.
27. In August 2015, Dr. Rop's symptoms began to impact his extremities, causing numbness. At some point, he experienced short term paralysis. His paralysis was so severe that he almost had a car accident because his foot could not operate the brake pedal. When he emailed Dr. Bancroft about the incident she replied, "thanks for the update. How will you get to work?"
28. Dr. Rop asked Dr. Cody Odell (ph) if he could change the schedule for the rest of the year so that he did not have to work nights due to the difficulty he was having with his vision. He also offered to do double shifts the following year. Dr. Odell denied his request.

29. At the end of the calendar year, in December 2015, Dr. Rop signed up to have dinner with prospective residents. All current residents were required to meet with prospective residents. However, Dr. Rop was never assigned a time to have dinner with a prospect.

30. In January 2016, an employee in the Graduate Medical Education (GME) Department asked Dr. Rop why he refused to do the interview dinners with the prospects. In fact, he had not refused to do the interviews. He was never assigned any interviews.

31. Dr. Rop wrote an email to Patti Horvath, the coordinator, asking about the issue. She was aware that he signed up for the dinners. She informed him that Dr. Bancroft contacted her and stated that he was not doing any interviews and that Dr. Odell would be doing them instead. Horvath assumed Dr. Rop asked to be excused.

32. Subsequent to his exchange with Horvath, Dr. Rop followed up with Dr. Bancroft. He was concerned that if this were true, Dr. Bancroft's actions were harming his reputation and integrity. If others assumed he refused to do the interview dinners, it would create the appearance that he was not trying to be a team player.

33. Dr. Bancroft denied the allegations made by Horvath. She offered him the opportunity to do all the interviews next year. Also, she seemed to suggests that he was only upset because he did not attend one of the nice dinners. Dr. Rop assured her that he was concerned about the harm to his reputation and not the food. Dr. Bancroft did not communicate with him for two weeks.

34. Two weeks after Dr. Rop inquired of Dr. Bancroft about the interview dinners, she approached him with a corrective letter. Dr. Rop disputed the allegations in the letter and believed the letter to be retaliatory.

35. The allegations in the corrective letter were actions that were done by other non-African, black or disabled residents who did not receive a corrective letter. For instance, the letter mentioned an issue with a patient having air in his lungs as a result of a procedure performed by Dr. Rop. Dr. Joe (last name unknown), a white male resident also caused air to be in the lung of a patient, but he was not written up or given a corrective letter. Rather, Dr. Joe was told by his supervisors not to worry because that was the purpose of a residency, to learn.

36. Another incident mentioned in the corrective letter was the result of the attending physician's inaction. That doctor was not disciplined nor did he receive a corrective letter. Dr. Rop disputed his corrective letter for months, and was not given any explanation for the different treatment he experienced.

37. In March 2016, Dr. Bancroft texted Dr. Rop about meeting with another doctor of African descent. This particular doctor did not practice in radiology, and Dr. Bancroft could not provide a reasonable explanation for why he should meet with this doctor other than the fact that he was African.

38. Dr. Rop discussed this issue with Dr. Schere, the Deputy Program Director who eventually moved into the position of Program Director. Dr. Rop stated that he felt like he was being discriminated and retaliated against. Dr. Schere responded that if he continued to complain, then Florida Hospital can fire him. He also told him that he does not have the resources to fight Florida Hospital.

39. Dr. Rop continued to experience hostile and retaliatory actions. He began to receive lower evaluations on professionalism. He was put on remediation for three months

from June 2016 to August 2016. At the end of his remediation he was deemed to not meet requirement and was placed on probation until November 18, 2016.

40. In the interim, Dr. Rop hired counsel who filed a complaint of harassment and discrimination with Human Resources and a grievance with respect to discrimination and due process violation with Florida Hospital's GME program.

41. Upon completion of his probation, Dr. Rop was to have a meeting on November 21, 2016. Due to the birth of his second daughter, Dr. Rop could not attend and the meeting was rescheduled to November 24, 2016. This meeting never occurred. The meeting was rescheduled at least twice more in December 2016 and January 2017, but it never took place.

42. In February 2017 Dr. Rop was terminated from the Radiology Residency Program. Prior to his termination, he received a letter from Florida Hospital saying that he would not be terminated and that it would negotiate a mutually agreeable solution to allow him to complete his residency. While they were negotiating, he was terminated. Dr. Rop has subsequently changed counsel.

43. After his termination, Dr. Rop dual filed a complaint with the EEOC and FCHR. Both the EEOC and FCHR failed to issue a decision without 180 days. He now files suit.

**COUNT I: DISPARATE TREATMENT BECAUSE OF RACE**

44. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 43, above.

45. The Plaintiff is a member of a statutorily protected class; he is black.

46. The Plaintiff is qualified for his position as a Resident. He successfully completed his medical degree and then interned prior to his acceptance into the Defendant's residency program.

47. The Plaintiff was subjected to an adverse employment action. To wit, he was placed on remediation twice. This was done contrary to the Defendant's policy and without the Plaintiff's knowledge. He was given a corrective letter that he disputed. In 2016, he was again placed on remediation for a third time. After the Defendant determined that he did not successfully complete remediation he was placed on probation in November 2016. At the end of his probation he never had a meeting with the Defendant. Ultimately, he was terminated in February 2017.

48. Additionally, Plaintiff overheard faculty members saying that he was just lazy and needed to stop smoking "weed." These are stereotypical attributes of black people and were not correct. Plaintiff has never consumed marijuana. His fatigue and red eyes were the result of his autoimmune disease.

49. A similarly situated employee outside of his protected class was treated more favorably. Specifically, Dr. Joe (last name unknown), a white doctor, was not disciplined or given a corrective letter for causing air to go into the lung of a patient, one of the stated issues in the Plaintiff's corrective letter. He was allowed to remain in the program. Also, the Plaintiff was disciplined for a patient's infection, but the white attending physician, who failed to take appropriate action despite Dr. Rop's suggestion, was not disciplined. Finally, no other residents were placed on remediation without their knowledge.

50. WHEREFORE DR. BAIYWO ROP, the Plaintiff, demand judgment against Defendant ADVENTIST HEALTH SYSTEM, in this cause of action compensatory damages in an amount to be shown at trial for past and future economic lost, extreme emotional distress, impairment of quality of life, and all other relief that is provided for by law and which the court deems appropriate.

**COUNT II: DISPARATE TREATMENT BECAUSE OF NATIONAL ORIGIN**

51. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 43, above.
52. The Plaintiff is a member of a statutorily protected class; his national origin is Kenyan.
53. The Plaintiff is qualified for his position as a Resident. He successfully completed his medical degree and then interned prior to his acceptance into the Defendant's residency program.
54. The Plaintiff was subjected to an adverse employment action. To wit, he was placed on remediation twice. This was done contrary to the Defendant's policy and without the Plaintiff's knowledge. He was given a corrective letter that he disputed. In 2016, he was again placed on remediation for a third time. After the Defendant determined that he did not successfully complete remediation he was placed on probation in November 2016. At the end of his probation he never had a meeting with the Defendant. Ultimately, he was terminated in February 2017.
55. Additionally, Plaintiff overheard faculty members saying that he was just lazy and needed to stop smoking "weed." These are stereotypical attributes of black people

and were not correct. Plaintiff has never consumed marijuana. His fatigue and red eyes were the result of his autoimmune disease.

56. A similarly situated employee outside of his protected class was treated more favorably. Specifically, Dr. Joe (last name unknown), a non-Kenyan doctor, was not disciplined or given a corrective letter for causing air to go into the lung of a patient, one of the stated issues in the Plaintiff's corrective letter. He was allowed to remain in the program. Also, the Plaintiff was disciplined for a patient's infection, but the white attending physician who failed to take appropriate action despite Dr. Rop's suggestion, was not disciplined. The white attending Physician did not receive a corrective letter either. Finally, no other residents were placed on remediation without their knowledge.

57. WHEREFORE DR. BAIYWO ROP, the Plaintiff, demand judgment against Defendant ADVENTIST HEALTH SYSTEM, in this cause of action compensatory damages in an amount to be shown at trial for past and future economic lost, extreme emotional distress, impairment of quality of life, and all other relief that is provided for by law and which the court deems appropriate

**COUNT III: DISPARATE TREATMENT BECAUSE OF DISABILITY**

58. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 43, above.

59. The Plaintiff is a member of a statutorily protected class; he is disabled or was perceived as disabled by the Defendant.

60. The Plaintiff is qualified for his position as a Resident. He successfully completed his medical degree and then interned prior to his acceptance into the Defendant's residency program.

61. The Plaintiff was able to perform the essential job functions with or without a reasonable accommodation.

62. The Plaintiff was subjected to an adverse employment action. To wit, he was placed on remediation twice. This was done contrary to the Defendant's policy and without the Plaintiff's knowledge. He was given a corrective letter that he disputed. In 2016, he was again placed on remediation for a third time. After the Defendant determined that he did not successfully complete remediation he was placed on probation in November 2016. At the end of his probation he never had a meeting with the Defendant. Ultimately, he was terminated in February 2017.

63. Additionally, Plaintiff overheard faculty members saying that he was just lazy and needed to stop smoking "weed." These are stereotypical attributes of black people and were not correct. Plaintiff has never consumed marijuana. His fatigue and red eyes were the result of his autoimmune disease. Other similarly situated residents, who did not have a medical disability were not referred to and treated as though they were merely lazy.

64. A similarly situated employee outside of his protected class was treated more favorably. Specifically, Dr. Joe (last name unknown), a non-disabled doctor, was not disciplined or given a corrective letter for causing air to go into the lung of a patient, one of the stated issues in the Plaintiff's corrective letter. He was allowed to remain in the program. Also, the Plaintiff was disciplined for a patient's infection, but the

attending physician who failed to take action despite Dr. Rop's suggestion, was not disciplined. The attending Physician did not receive a corrective letter either. Finally, no other residents were placed on remediation without their knowledge.

65. WHEREFORE DR. BAIYWO ROP, the Plaintiff, demand judgment against Defendant ADVENTIST HEALTH SYSTEM, in this cause of action compensatory damages in an amount to be shown at trial for past and future economic lost, extreme emotional distress, impairment of quality of life, and all other relief that is provided for by law and which the court deems appropriate.

**COUNT IV: RETALIATION**

66. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 43, above.
67. Plaintiff complained about what he believed to be discriminatory treatment. He complained to Dr. Schere, the Deputy Program Director, who later became the Program Director, about what he perceived to be discriminatory and retaliatory action by the Defendant. Dr. Schere told Dr. Rop to consider that the Defendant could fire him if he continues to complain and that he did not have resources to fight the Defendant.
68. Plaintiff also formally complained through his attorney, to HR and the Defendant's GME program about what he perceived to be discriminatory action by the Defendant.
69. Plaintiff suffered adverse actions as a result of his complaints. Two weeks after Plaintiff complained to Dr. Schere about discrimination, he was disciplined. Dr. Bancroft gave him a corrective letter. He was later placed on remediation again for three months. Following his remediation, he was placed on probation. After filing a

formal complaint Plaintiff was never given a post-probation meeting with the Defendant. He was terminated.

70. There is a causal nexus between Plaintiff's complaints and his adverse actions. Within two weeks of complaining to Dr. Schere, the Plaintiff was disciplined with a corrective letter. This was the first step in a progressive discipline process that included another remediation, probation and termination. He was terminated shortly after his attorney filed a formal complaint with HR and the GME program.

71. WHEREFORE DR. BAIYWO ROP, the Plaintiff, demand judgment against Defendant ADVENTIST HEALTH SYSTEM, in this cause of action compensatory damages in an amount to be shown at trial for past and future economic lost, extreme emotional distress, impairment of quality of life, and all other relief that is provided for by law and which the court deems appropriate.

**DAMAGES**

WHEREFORE, the Plaintiff, Dr. Baiywo Rop, demand judgment and damages against Defendant Florida Hospital as follows:

An award of compensatory damages in an amount to be shown at trial for past and future economic lost, extreme emotional distress, impairment of quality of life, and all other relief that is provided for by law and which the court deems appropriate.

Respectfully submitted this 25th day of October, 2017.

/s/ ***Jerry Girley***
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